

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-2162

DIANE S. SHERMAN,

Plaintiff - Appellant,

versus

VERIZON VIRGINIA, INCORPORATED,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. F.B. Stillman, Magistrate Judge. (CA-01-526-2)

Submitted: December 18, 2002

Decided: January 21, 2003

Before NIEMEYER, KING, and GREGORY, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Diane S. Sherman, Appellant Pro Se. Betty S.W. Graumlich, George William Norris, Jr., MCSWEENEY & CRUMP, P.C., Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Diane S. Sherman appeals the magistrate judge's orders¹ denying her motion for an opportunity to be heard and her motion filed under Fed. R. Civ. P. 60(b)(3), and denying her leave to proceed on appeal in forma pauperis.² With regard to Sherman's Rule 60(b)(3) motion and motion for an opportunity to be heard, we have reviewed the record and find no reversible error. Accordingly, we affirm this portion of the appeal on the reasoning of the district court. See Sherman v. Verizon Virginia, Inc., No. CA-01-526-2 (E.D. Va. Sept. 24, 2002).

Sherman also appeals the magistrate judge's order denying her leave to proceed in forma pauperis. We dismiss this portion of the appeal as moot. See Fed. R. App. P. 24; United States v. Boutwell, 896 F.2d 884, 890 (5th Cir. 1990). Sherman has filed in this court a motion to proceed on appeal in forma pauperis, which contains information that was not presented to the magistrate judge. We grant Sherman's motion to proceed on appeal in forma pauperis.

¹ This case was decided by a magistrate judge upon consent of the parties under 28 U.S.C. § 636(c)(1) (2000).

² While Sherman's informal brief filed in this court states that she is appealing from the magistrate judge's order granting summary judgment in favor of Verizon Virginia, Inc., her informal brief was not filed within the appeal period set forth in Fed. R. App. P. 4(a)(1), and, thus, cannot serve as a notice of appeal. See Smith v. Barry, 502 U.S. 244, 247-49 (1992) (holding that document filed within appeal period and containing information required by Fed. R. App. P. 3(c), is functional equivalent of notice of appeal).

Finally, we deny Sherman's motions for appointment of counsel and to correct the record, deny her motion to consolidate with Appeal No. 02-2170, and deny her motion to expedite consideration of this appeal as moot. We deny Verizon Virginia, Inc.'s motion to dismiss the appeal and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART